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In The

Supreme Court of the United States

ROSALINA DE LA O AND
MARIA CHRISTINA RIVERA,

Petitioners,

v.

HOUSING AUTHORITY
OF THE CITY OF EL PASO,

Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit**

PETITION FOR WRIT OF CERTIORARI

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LIST OF PARTIES AND RULE 29.6 STATEMENT

The parties to the proceedings before the United States Court of Appeals for the Fifth Circuit were Petitioners, Rosalina De La O and Maria Christina Rivera, and Respondent, Housing Authority of the City of El Paso.

The Housing Authority of the City of El Paso is a public entity having its own Board of Directors to set and enforce policy regarding the operation of public housing for the City of El Paso. Board members are appointed by the City of El Paso.

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PETITION FOR WRIT OF CERTIORARI

Petitioners Rosalina De La O and Maria Christina Rivera respectfully petition for a writ of certiorari to review the judgment and opinion of United States Court of Appeals for the Fifth Circuit.

OPINION BELOW

The court of appeals judgment and opinion is reprinted in the appendix hereto at pages App. 1 to App. 24. The district court's summary judgment is not published but is reprinted in the appendix at pages App. 25 to App. 26.

JURISDICTION

The court of appeals entered its judgment and opinion affirming the district court's order upholding the challenged regulations on July 18, 2005. The jurisdiction of this Court is invoked under 28 U.S.C. § 2101(c).

STATUTORY PROVISIONS AND DOCTRINES INVOLVED

42 U.S.C. § 1983 allows private individuals to seek redress for damages caused under color of law in violation of a right, privilege or immunity protected by the U.S. Constitution or federal statute.

The First Amendment protections of anonymous political activity and the right to distribute handbills are

applicable to the states through the Fourteenth Amendment of the U.S. Constitution. At issue here is whether the challenged regulations when considered under the non-public *fora* standard of review may be deemed content-neutral that do not infringe upon Petitioners' rights, in conflict with the holding of this Court's opinion in ***Watchtower Bible and Tract Society, Inc. v. Village of Stratton***, 536 U.S. 150, 150 L.Ed.2d 205, 122 S.Ct. 2080 (2002), because they are public housing tenants. Specifically, the issue involved is whether the court of appeals erred in determining that ***Watchtower*** protections were not available to Petitioners because the ordinance by the Village of Stratton encompassed the private residences of the village, but the regulations adopted by the Respondent housing authority applied only to public housing residents. Stated differently, the issue is whether the court of appeals erred in limiting the First and Fourteenth Amendment rights of Petitioners to a lesser degree of protection than that recognized for residents of private housing merely because they reside in public housing.

STATEMENT OF THE CASE

A. Proceedings in the District Court:

Petitioners filed suit challenging certain regulations of the Housing Authority of the City of El Paso regarding requirements that persons canvassing housing projects for political campaigns or causes first register with Respondent or face trespassing charges as well as regulations that preclude tenants from going door to door for any purpose, including obtaining signatures for redress of grievances, for lending support to particular political candidates or religious beliefs or other community-related

activities. The challenged regulations also require registration which is limited to the usual business hours of Respondent, prior to the activity and include a complete ban on any activity on Sundays. A copy of the most current regulation, which was amended while the matter was on appeal before the court of appeals, is reprinted in the Appendix in pages App. 58 to App. 61. In order for Petitioners, or any other tenant, to live in public housing they must sign a pledge agreeing to the limitations and face eviction if the pledge is violated.

The trial court issued a temporary restraining order compelling Respondent to stop enforcement of the regulations on October 3, 2002. At a hearing on October 17, 2002, Respondent represented to the court that enforcement had been voluntarily stopped, and the temporary restraining order was dissolved. Notwithstanding such representations, Respondent continued to enforce the regulations, and Respondent filed a motion for summary judgment arguing that because public housing was a private *fora* and the regulations were content neutral and that they were enacted to protect residents from crime and harassment. While the suit was pending in district court, the president of the housing project where Petitioners reside was removed as president because she advocated against certain policies and decisions. Although proponents of removal were given free access to tenants to advocate their cause, the president was denied the opportunity to canvass after delivering a copy of the petition to be circulated to the project office. Her affidavit, which was attached to Petitioners' opposition to the summary judgment motion, is reprinted in the appendix at pages App. 69 to App. 80. Respondent supported its motion with an affidavit from

the Director of the Housing Authority in which he asserted that the regulations were to protect residents from crime and from the flow of undocumented immigrants through the project, where he stated that one project had a Border Patrol station inside. The affidavit is reprinted in the Appendix at pages App. 81 to App. 85. The director had also written letters to the original resident challenging the regulations regarding an activity against him to preclude his canvassing for political office in his own housing project. Those letters are also reprinted in the Appendix at pages App.85 to App. 89. His challenge resulted in an original opinion initially granted by the court of appeals finding the regulations to be unconstitutional. The opinion, which was vacated for an *en banc* hearing, was not published but is reprinted in the Appendix at pages App. 90 to App. 109. The appeal was ultimately dismissed as moot after the plaintiff passed away.

The district court granted summary judgment on March 24, 2004, finding that the regulations were reasonable and content-neutral and further finding that under the private *fora* standard Petitioners were not entitled to First Amendment protections. The district court based its decision in large part on the director's affidavit. In addition to the affidavit setting forth clear selective enforcement, Petitioners also included a detailed affidavit by the former security director for Respondent that factually challenged the assertions by the director as unfounded. The affidavit is reprinted in the Appendix at pages App. 49 to App. 54.

B. Proceedings in the Court of Appeals:

The court of appeals issued its judgment and opinion on July 14, 2005, affirming the district court in part and remanding in part. The court of appeals determined that the regulations, whether considering the original version or the amended version, were content-neutral and reasonably necessary to protect the residents. The court of appeals determined that Respondent's affidavit was based on direct knowledge by the housing director, even though he was not at each project regularly, and that Petitioners' rebuttal affidavit was not based on direct knowledge, although the affidavit on its face is based strictly from direct observations at each of the projects during his affiant's tenure as head of security. The court of appeals did find that summary judgment was improperly granted on the issue of selective enforcement because evidence was presented to substantiate its existence and remanded for further consideration of that issue.

REASONS FOR GRANTING THE PETITION

The court of appeals judgment and opinion constitutes a serous limitation of well established law as interpreted by this Court and will severely limit the Constitutional rights of residents of public housing based on the simple fact of where they reside by taking away applicability of constitutional doctrine established for those that reside in private housing. The judgment and opinion distinguishes the clearly enunciated holding of ***Watchtower Bible and Tract Society of New York, Inc. v. Village of Stratton,*** 536 U.S. 150, 164 (2002) where this Court struck down an ordinance that infringed on anonymity in pursuit of the exercise of protected activity through the

use of registration requirements and limitation of access through door-to-door canvassing of private property in a municipality. Such restriction cuts against the grain of the protections afforded through ***Watchtower*** to individuals merely because they reside in public housing.

The vacated opinion in the case of ***Vasquez v. HACEP***, Revised November 15, 2001, Opinion No. 00-50702, 5th Cir. (See App. 90 – App. 109) considered the same regulations at issue here and determined the matter as this Court determined the unconstitutionality of the Village of Stratton ordinance dealing with the same issues. The opinion, at App. 93 and App. 94, determines that the First Amendment guarantees the unrestricted flow of information into the market place of ideas to both the proponent and the beneficiary embracing the right to distribute and receive literature. **Citing, *Harris v. Rhodes***, 94 F.3d 196 (5th Cir. 1996).

The established rights and interests that the court of appeals decision serves to erode for residents of public housing are clear and necessary to a functioning democracy. The right to free speech is well established, as is the accompanying right to meaningful participation in the political process. Registration with an agency prior to being allowed to make a public speech has been deemed to be a strong factor in chilling the exercise of constitutionally protected activity and incompatible with the First Amendment. ***Thomas v. Collins***, 323 U.S. 516, 89 L.Ed. 430, 65 S.Ct. 315 (1945). Limitation of the use of permissible areas of public or semi-public domain restricts anonymity, which is necessary in the exercise of First Amendment rights, is unconstitutional. ***Watchtower***, 536 U.S. at 164.

Even when the situs of challenged activity is in a non-public *fora*, the mere issue of where the event takes place is not dispositive. The government may regulate speech and activity in non-public *fora* as long as the regulation is reasonable and does not suppress expression merely based on public officials' opposition. ***Perry Educational Association v. Perry Local Educators' Association***, 460 U.S. 37, 46 (1988). Precedent is clear that a balance between regulations that seem to advance a legitimate interest and their effect on First Amendment rights is necessary. ***Watchtower***, ibid. This Court has long held that door-to-door distribution of circulars is essential to the poorly financed causes of "little people." ***Watchtower***, **citing *Martin v. City of Struthers***, 319 U.S. 141, 144-146, 87 L.Ed. 1313, 63 S.Ct. 862 (1943). As in ***Watchtower***, the breadth of speech covered by the regulation and its nature underscore the error in the court of appeals distinguishing of this case from ***Watchtower***. The only salient difference is that the Petitioners in this case happen to be residents of public housing.

The court of appeals decision also precludes residents of public housing from the protections extended in ***Watchtower*** over spontaneous activity. As in ***Watchtower***, residents are precluded from engaging in any activity on Sunday. Even if they secured permission, any thought or motivation occurring on Sunday would not be possible due to the regulations.

Petitioners' summary judgment evidence directly challenged the self-serving assertions of Respondent through its director's affidavit. The challenged affidavit eroded the stated reason of protection of residents from harm and harassment that Respondent argued. Given the summary judgment evidence presented by Petitioners, the